



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC748]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction of the Maryland Offshore Wind Project Offshore of Maryland

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from US Wind, Inc. (US Wind) for authorization to take small numbers of marine mammals incidental to the development of the Maryland Offshore Wind Project (Project) in the Bureau of Ocean Energy Management (BOEM) Commercial Lease on the Outer Continental Shelf OCS-A 0490 off of Maryland over the course of 5 years beginning on January 1, 2025. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of US Wind's request for regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on US Wind's application and request.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.taylor@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of US Wind's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On August 31, 2022, NMFS received an application from US Wind requesting authorization to take marine mammals incidental to the development of the Project in the BOEM Lease Area OCS-A- 0490 off of Maryland. In response to our comments, and following an extensive information exchange with NMFS, US Wind submitted a final revised application on March 31, 2023, which we deemed adequate and complete on April 3, 2023. US Wind requests the regulations and subsequent Letter of Authorization (LOA) be valid for 5 years, beginning on January 1, 2025.

US Wind plans to construct the Project in three phases. Maryland Wind (phase 1; MarWin) is scheduled to be constructed in 2025; Momentum Wind (phase 2) is scheduled to be constructed in 2026; and Future Development (phase 3) is scheduled to be constructed in 2027. Each phase would include impact installation of wind turbine generators (WTG) and offshore substation (OSS) foundations, and inter-array and export cable trenching, laying, and burial. In addition, a single meteorological (met) tower would be installed during Momentum Wind construction. Site characterization surveys would be conducted only during the Momentum Wind and Future Development phases. Vessels would be used to transport crew, supplies, and materials to the project area to support construction. US Wind has determined that a subset of these activities (*i.e.*, installing piles using impact pile driving and site characterization surveys) may result in the take, by Level A harassment and Level B harassment, of marine mammals. Therefore, US Wind requests authorization to incidentally take marine mammals.

Specified Activities

Through a competitive leasing process under 30 CFR 585.211, US Wind was awarded Commercial Lease OCS-A 0490, offshore of Maryland, and the exclusive rights to submit a construction and operations plan (COP) for activities within the lease area. US Wind has submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the Project, which is a commercial-scale offshore wind energy facilities within a Lease Area covering approximately 80,000 acres (323.75 square kilometers (km²)) and located approximately 18.5 km off the coast of Maryland. The Project would consist of a total capacity of up to two gigawatts (GW) and US Wind has secured power purchase agreements (PPAs) with the state of Maryland for 1,108 megawatts (MW). The Project would include MarWin, a wind farm of approximately 300 MW, Momentum Wind, consisting of approximately 808 MW, and future development in the remainder of the lease area. The Project would consist of up to

114 wind turbine generators, 4 OSSs, 1 met tower, 2 transmission cables to shore making landfall in Delaware, and up to 4 export cables.

US Wind anticipates the following activities may potentially result in the harassment of marine mammals during the effective period of the requested regulations and associated LOA:

- Installing up to 114 WTG monopile foundations with a maximum diameter of 11 meters (m) using a 4,400 kJ impact hammer;
- Installing up to four OSSs foundation using 11-m monopiles driven with a 4,400 kJ impact hammer or jacket foundation comprised of 3-m pin piles driven with a 1,500 kJ impact hammer, or suction bucket foundations;
- Installing one permanent met tower supported by three 1.8-m pin piles using a 500 kJ impact hammer; and
- Using HRG equipment to survey the Lease Area over 28 days.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning US Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by US Wind, if appropriate.

Dated: April 26, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.